

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Codification
District
of
Columbia
Official
Code

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Edition

2002
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To prohibit certain predatory lending practices with respect to residential mortgage loans, to repeal the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, and to revive sections 95, 521, 522, 523, 534, 535, 536, 537, 538, 539, 539a, 544, and 545 of An Act To establish a code of law for the District of Columbia and sections 1, 2, 3, 11, 13, 14, and 26 of the Compiled Statutes of the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Home Loan Protection Act of 2002".

New
Chapter
11A,
Title 26

TITLE I. DEFINITIONS; FEDERALLY REGULATED AND SUPERVISED ENTITIES AND FANNIE MAE AND FREDDIE MAC.

Sec. 101. Definitions.

For the purposes of this act, the term:

New
§ 26-
1151.01

(1) "Annual percentage rate" means the annual percentage rate for the mortgage loan calculated according to the provisions of the Truth in Lending Act, the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, and the official staff commentary thereto.

(2) "Assessed value" means the full market value of real property for assessment and taxation purposes as determined by the Office of Tax and Revenue and in effect on the applicable date.

(3) "Bona fide loan discount points" means loan discount points which are knowingly paid by the borrower for the express purpose of reducing, and which reduce, the annual percentage rate.

(4) "Borrower" means each accommodation party, borrower, co-borrower, cosigner, co-maker, obligor, mortgagor, or guarantor obligated to repay a loan that is secured by a lien instrument.

(5) "Bridge loan" means a loan that has a term of less than one year and that

only requires that payments of interest be made until the entire unpaid balance becomes due.

(6) "Commissioner" means the Commissioner of the Department of Banking and Financial Institutions, or his or her authorized designee.

(7)(A) "Covered loan" means a mortgage loan, secured by property located in the District (including an open-end line of credit, but not including a mortgage loan insured or guaranteed by a state or local authority, the District of Columbia Housing Finance Agency, the Federal Housing Administration, or the Department of Veteran Affairs, or a reverse mortgage transaction), in which the terms of the mortgage loan exceed one or more of the following thresholds:

(i) The loan is secured by a first mortgage on the borrower's principal dwelling and the annual percentage rate at closing will exceed by more than 6 percentage points the yield on United States Treasury securities having comparable periods of maturity to the loan maturity measured as of the 15th day of the month immediately preceding the month in which the application for the residential mortgage loan is received by the creditor;

(ii) The loan is secured by a junior mortgage on the borrower's principal dwelling and the annual percentage rate at closing will exceed by more than 7 percentage points the yield on United States Treasury securities having comparable periods of maturity to the loan maturity measured as of the 15th day of the month immediately preceding the month in which the application for the residential mortgage loan is received by the creditor; or

(iii) The origination/discount points and fees payable by the borrower at or before loan closing exceed 5% of the total loan amount.

(B) Notwithstanding subparagraph (A) of this paragraph, in the case of a loan made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank that is regulated and supervised by a supervising federal agency, which entities shall include the finance and operating subsidiaries of such entities that are so regulated and supervised, the term "covered loan" shall have the same meaning as a mortgage in section 103(aa) of the Truth in Lending Act, and regulations adopted pursuant thereto by the Federal Reserve Board, including 12 C.F.R. § 226.32 (relating to requirements for certain closed-end home mortgages).

(8) "Department" means the Department of Banking and Financial Institutions.

(9) "District" means the District of Columbia.

(10) "Gross income" means a borrower's gross income as set forth in a mortgage loan application and by a borrower, the borrower's financial statement, a credit report, financial information provided to the lender on behalf of the borrower, or as determined by any other reasonable means available to a lender, including a signed statement of the borrower; provided, that the borrower certifies the accuracy of the statement of his or her income and provides documentation that evidences such gross income.

(11) "Lender" means any person to whom the obligation is initially payable, either under the terms of the note or contract, or by agreement if there is no note or contract.

The term "lender" shall include a mortgage broker, obligee, or mortgagee.

(12) "Lien instrument" means a deed of trust; mortgage; security agreement; trust deed; land installment contract; contract for a deed; assignment of lease, rent, or profit; or any other conveyance or retention of an interest in real property or personal property related to real property, including cooperative housing units and garage spaces, which secures the performance of a note or other obligation and creates a lien on real property or security interest in personal property. The term "lien instrument" shall include an amendment, modification, supplement, replacement, or restatement of a lien instrument.

(13) "Mortgage broker" shall have the same meaning as in section 2(10) of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1101(10)).

(14)(A) "Mortgage loan" means any loan or other extension of credit:

(i) To a natural person primarily for personal, family, or household purposes;

(ii) That is secured by a lien instrument secured, in whole or in part, by residential real property located within the District which there is located, or there is to be located, a structure, intended principally for occupancy of from one to 4 families, and which is, or will be, occupied by the borrower as the borrower's principal dwelling; and

(iii) For which the principal amount does not exceed the conforming loan size limit for a comparable dwelling as established and revised from time to time by the Federal National Mortgage Association or the Federal Home Loan Corporation.

(B) A mortgage loan shall not include an extension of credit for the purpose of financing the acquisition or initial construction of a borrower's residential real property.

(15) "Note" means a promissory note secured by a deed of trust, a promissory note or mortgage bond secured by a mortgage, or any other written evidence of indebtedness or obligation secured by a lien instrument.

(16) "Notice" means a written notice that describes with reasonable clarity the specific act, event, or default and the response that the notice sender is seeking from the addressee or other party obligated to the sender of the notice.

(17) "Origination/discount points and fees" means points and fees as defined in 12 C.F.R. § 226.32(b).

(18) "Person" means an individual, corporation, governmental subdivision or agency, business trust, estate, trustee for a trust, partnership, association, limited liability company, joint venture, government, or any other legal or commercial entity or agent.

(19) "Point" means, when referring to a fee, one percent applied to a portion of a loan amount.

(20) "Principal balance" means the principal amount of a note.

(21) "Real property" means real property in the District and interests in real property located in the District, including the stock of a cooperative housing corporation and

associated residential lease of a cooperative housing unit or garage space.

(22) "Red Flag Warning Disclosure Notice" means the notice provided for by section 211.

(23) "Residential real property" means real property in the District improved by:

(A) A one to 4 family dwelling, including a condominium or cooperative housing unit; or

(B) A mixed-use building with an assessed value of \$1 million or less containing one to 4 family dwelling units where:

(i) The owner of the residential real property is one or more natural persons who occupy one of the dwelling units as the owner's principal dwelling; or

(ii) The borrower is one or more natural persons who intend, in good faith, to occupy one of the dwelling units as the borrower's principal dwelling at the time of the loan closing.

(24) "Servicer" shall have the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974, approved November 28, 1990 (104 Stat. 4405; 12 U.S.C. § 2605(i)(2)).

(25) "Subsidiary", with respect to a specified bank holding company, means a company:

(A) Twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by the bank holding company, or is held by it with power to vote;

(B) The election of a majority of whose directors is controlled in any manner by the bank holding company; or

(C) With respect to the management or policies of which the bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board of Governors of the Federal Reserve System, after notice and opportunity for hearing.

(26) "Supervising federal agency" means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, or the Federal Deposit Insurance Corporation.

(27) "Truth in Lending Act" means the Truth in Lending Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 *et seq.*).

Sec. 102. Federally regulated, supervised, and insured entities and the Federal National Mortgage Association and Federal Home Loan Corporation.

(a) Nothing in Title II shall be construed to apply to loans made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank, that is regulated and supervised by a supervising federal agency, including the finance and operating subsidiaries of such entities that

New
§ 26-
1151.02

are so regulated and supervised.

(b) This section shall not apply to any lender that is not federally regulated and supervised, except the Federal National Mortgage Association, or the Federal Home Loan Corporation.

New
§ 26-
1152.01

(c) Except as provided in subsection (d) of this section, the Home Ownership and Equity Protection Act of 1994, approved September 23, 1994 (108 Stat. 2190; codified in various sections of Chapter 16 of the U.S. Code), and the implementing regulations issued by the Federal Reserve Board, as each may be amended from time to time, are hereby adopted by reference thereto and shall apply to loans made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank that is regulated and supervised by a supervising federal agency, including the finance and operating subsidiaries of such entities that are so regulated and supervised, that engage in lending activities in the District.

New
§ 26-
1152.02

(d) The violations, remedies, penalties, and enforcement provisions set forth in Title III shall apply to loans made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank that is regulated and supervised by a supervising federal agency, including the finance and operating subsidiaries of such entities that are so regulated and supervised, that engage in lending activities in the District with regard to violations of this act.

TITLE II. PROHIBITED PRACTICES.

Sec. 201. This title shall only apply to a covered loan as defined in section 101(7)(A).

Sec. 202. Insufficient repayment ability.

(a) A lender shall not make a covered loan if the borrower, at the time that the covered loan is closed, cannot reasonably be expected to make the scheduled payments. For purposes of making this determination:

(1) The lender's consideration shall include the ability to make any payments for mortgage insurance premiums, escrow deposits, or direct payment of real estate taxes and property insurance premiums (in addition to the payments of interest and principal) and the employment status of the borrower. The lender may consider the current and expected income, current obligations, and other financial resources of the borrower (other than the borrower's equity in the dwelling which secures repayment of the loan).

(2) The lender shall not consider the borrowers' equity interest in the residential real property which secures repayment of the covered loan; provided, that the borrower's equity interest in the residential real property which secures repayment of the covered loan may be considered by the lender in determining whether to approve the loan as part of the evaluation of the borrower's likelihood of default.

(3) In the case of a covered loan which includes payment terms under which the

aggregate amount of the scheduled payments will not fully amortize the outstanding principal balance, the lender's determination of the ability of the borrowers to make an expected balloon payment at the scheduled maturity date may include consideration of the borrowers' equity interest in the residential real property and the borrowers' ability, based on current market conditions, to refinance the covered loan without penalty, hardship, or material loss of equity.

(4) A lender shall not include or add a borrower to the covered loan who did not own or reside in the residential real property securing the covered loan prior to the covered loan transaction for the purpose of increasing the income and ability of the borrowers owning or residing in the residential real property to make all the scheduled payments of interest, principal, and mortgage insurance premiums, and escrow deposits for, or direct payment of, real estate taxes and property insurance premiums, unless the included or added borrower separately confirms in writing to the lender that the borrower expects and commits to make or substantially contribute to:

New
§ 26-
1152.03

(A) The scheduled payments on the covered loan; and

(B) Escrow deposits for or direct payment of real estate taxes and property insurance premiums.

(b) The requirements of subsection (a) of this section shall only apply to borrowers whose gross income, as reported on the loan application which the lender relied upon in making the credit decision, does not exceed 120% of median family income. For purposes of this subsection, the median family income shall be the most recent estimate made by the U.S. Department of Housing and Urban Development at the time the application is received. For purposes of determining gross income under this section, only the income of the borrower shall be considered.

New
§ 26-
1152.04

(c) The current and expected income, current debts, current assets, and employment of the borrowers shall be verified by the lender in accordance with standard residential mortgage lending industry practices to underwrite a loan secured by a residential lien instrument. For the purposes of this subsection, the lender shall be deemed to have followed standard residential mortgage lending industry practices if the lender verified the borrowers' current and expected income and current debts in accordance with the verification guidelines and practices of the Federal National Mortgage Association, Federal Home Loan Corporation, U.S. Department of Housing and Urban Development, or U.S. Department of Veterans Affairs. Nothing in this subsection shall preclude the utilization of other standard industry verification practices accepted by applicable regulatory authorities.

New
§ 26-
1152.05

Sec. 203. Restrictions on the financing of single-premium credit insurance.

A lender shall not sell any individual or group credit life, accident, health, or unemployment insurance product on a prepaid single premium basis in conjunction with a covered loan. Credit insurance sold by a lender on a basis other than a prepaid single premium shall be accompanied by a clear and conspicuous disclosure, provided at least 3 days before closing, stating that the credit insurance shall not be a condition to the extension of mortgage

New
§ 26-
1152.06

credit and that the borrower may elect not to purchase the insurance. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly or bi-weekly basis shall not be considered financed by the lender; provided, that the disclosure required by this section shall be provided to the borrower for any insurance, debt cancellation, or suspension services purchased by the borrower.

Sec. 204. Restriction on financing origination/discount points and fees.

If a lender refinances a loan secured by the same residential real property to the same borrower which was made 18 months or less before the covered loan is made, the same lender shall not finance, directly or indirectly, any portion of the covered loan's origination/discount points and fees or other fees payable to the lender or any third party in excess of the greatest of 3% of the new covered loan principal amount actually funded, \$400, or such amount as the Mayor may establish by regulation, excluding:

- (1) Reasonable charges described in 12 C.F.R. § 226.4(c)(7)(i), (iii), (iv), and (v); and
- (2) Bona fide loan discount points.

New
§ 26-
1152.07

New
§ 26-
1152.08

Sec. 205. No encouragement of default.

A lender shall not recommend or encourage the borrower to default on an existing loan or other debt prior to and in connection with the closing or planned closing of a covered loan that refinances all or any portion of the existing loan or other debt.

Sec. 206. Unfair steering or improper use of credit scores.

(a) A lender shall not steer, counsel, or direct any prospective borrower to accept a loan product with a risk grade less favorable than the risk grade that the borrower would qualify for based on that lender's then current underwriting guidelines, prudently applied, considering the information available to that lender, including the information provided by the borrower. A lender shall not violate this section if the risk grade determination applied to a borrower is reasonably based on the lender's underwriting guidelines and if it is an appropriate risk grade category for which the borrower qualifies with the lender.

(b) The lender shall not make, or cause to be made, any false, deceptive, or misleading statement, representation, or determination regarding the borrower's ability to qualify for any mortgage product or the borrower's credit score.

New
§ 26-
1152.09

Sec. 207. Failing to report favorable payment record.

A lender or its servicer shall report a borrower's favorable payment history and information to a nationally recognized credit-reporting agency at least once every 12 months. This section shall not prevent a lender or its servicer from agreeing with the borrower not to report payment history information and shall not apply to covered loans held or serviced by a lender for less than 90 days. Nothing in this section shall prevent a lender from reporting a

New
§ 26-
1152.10

borrower's unfavorable payment history.

1152.10

Sec. 208. Home improvement contracts.

(a) A lender shall not pay a contractor under a home improvement contract from the proceeds of a covered loan other than by an instrument payable to the borrower or jointly payable to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent that is independent from the contractor in accordance with the terms established in a written agreement signed by the borrower, the mortgage lender, and the contractor prior to the disbursement of funds to the contractor. The borrower shall be responsible for any reasonable fees or costs associated with the election. A lender may conclusively rely on a certified written statement from either the contractor or the third-party escrow agent that states that the escrow agent and contractor are independent from each other.

New
§ 26-
1152.11

(b) A lender shall not purchase a home improvement contract in connection with, or make an instrument payable to, a home improvement contractor that is not bonded with the District pursuant to Subchapter IV of Chapter 28 of Title 47 of the District of Columbia Official Code. The Mayor shall maintain a list of home improvement contractors that are bonded and in good standing. Unless the lender has notice that the contractor is not licensed or authorized to do business in the District, a lender who relies on the list within 60 days of the closing shall be considered in compliance with this section; provided, that the lender has provided the Mayor with a name, telephone number, mailing address, and electronic mail address of a contact person to whom the Mayor can provide updates or amendments to the list required by this subsection.

New
§ 26-
1152.12

Sec. 209. No increase in interest rate upon default.

A lender shall not make a covered loan that includes a provision that increases the covered loan's interest rate upon a default. This section shall not apply to an interest rate increase in adjustable rate covered loans based on a recognized adjustable rate mortgage index and constant margin amount if an event of default or the acceleration of the maturity date of the covered loan does not cause or permit the increase in the interest rate.

New
§ 26-
1152.13

Sec. 210. Charges in bad faith.

A lender shall not charge and retain fees paid by the borrower in making a covered loan which are:

- (1) For services that are not actually performed;
- (2) For loan discount points which are not bona fide discount points; or
- (3) In violation of the Real Estate Procedures Settlement Act of 1974, approved

New
§ 26-
1152.14

December 22, 1974 (88 Stat. 1724; 12 U.S.C. § 2601 *et seq.*).

Sec. 211. Failure to timely send disclosure notice.

(a) In making a covered loan, a lender shall send to the borrower a Red Flag Warning

New
§ 26-
1152.15

Disclosure Notice.

(b) This notice shall be received by the borrower at least 3 business days prior to closing of the loan.

New
§ 26-
1152.16

(c) If the loan is originated with the assistance of a mortgage broker, the mortgage broker shall provide the Red Flag Warning Disclosure Notice.

(d) Only one Red Flag Warning Disclosure Notice must be provided to each borrower.

(e) The Mayor shall promulgate, by regulation, the Red Flag Warning Disclosure Notice and instructions for completing, executing, and sending the disclosure notice. The Mayor may revise the disclosure notice or instructions at any time not less than 90 days in advance of the publication in the District of Columbia Register. After the publication of a revised disclosure notice or revised instructions, either the existing or revised instructions may be followed and either the existing or revised disclosure notice shall be accepted until the advance publication period expires.

New
§ 26-
1152.17

New
§ 26-
1152.18

Sec. 212. Prepayment premium, fee or charge.

A lender shall not include in a covered loan or collect or attempt to collect any prepayment premium, fee, or charge in violation of Chapter 33 of Title 28 of the District of Columbia Official Code.

Sec. 213. Limitations on balloon payments.

A lender shall not make a covered loan that provides for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments unless the balloon payment becomes due and payable not less than 7 years after the date of the loan closing. This section shall not apply if the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

New
§ 26-
1152.19

New
§ 26-
1152.20

Sec. 214. No call provision.

A lender shall not make a covered loan that includes a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness; provided, that this prohibition shall not apply when repayment of the covered loan has been accelerated by a bona fide default or pursuant to some other provision of the loan agreement unrelated to the payment schedule.

Sec. 215. No negative amortization.

A lender shall not make a covered loan with a payment schedule with regular periodic payments that causes the principal balance to increase.

New
§ 26-
1152.21

Sec. 216. No advance payments.

A lender shall not make a covered loan that includes terms under which any periodic

payments required under the loan are paid in advance from loan proceeds.

Sec. 217. No advance waivers.

A provision in a covered loan whereby a borrower waives in advance a violation of this act shall be void.

Sec. 218. No oppressive mandatory arbitration clause.

(a) A mandatory arbitration clause in a note, lien, instrument, or ancillary lien instrument or obligation that evidences or secures a covered loan that is oppressive, unfair, unconscionable, or in substantially in derogation of the rights of borrowers shall be void.

New
§ 26-
1152.22

(b) Arbitration clauses that comply with the standards adopted by the Mayor pursuant to regulation shall be presumed not to violate this section; provided, the Mayor's standards be in accordance with the procedures of a nationally recognized arbitration forum such as the American Arbitration Association.

New
§ 26-
1152.23

Sec. 219. Homeownership counseling.

A lender shall inform a borrower of his or her right to obtain counseling in connection with a covered loan. A Red Flag Warning Disclosure Notice shall satisfy this requirement.

Sec. 220. Broker licensor.

Upon initiation of a business relationship with a mortgage broker, a lender shall verify that each mortgage broker with whom it does business in connection with making a covered loan is licensed or otherwise authorized to do business in the District. After verifying that the broker is licensed or authorized to do business in the District, the lender shall be entitled thereafter to rely upon a signed written statement by the mortgage broker that the mortgage broker is duly authorized to conduct business in the District unless the lender has notice that the mortgage broker is not licensed or authorized to do business in the District; provided, that the lender has provided the Mayor with a name, telephone number, mailing address, and electronic mail address of a contact to whom the Mayor can provide updates or amendments to the list of licensed brokers.

New
§ 26-
1153.01

Sec. 221. Filing requirements.

(a) Within 14 days following the funding of a covered loan, a lender otherwise subject to the jurisdiction of the Mayor shall submit to the Mayor a loan package including copies of the following documents:

- (1) The settlement statement;
- (2) The FP-7 Form filed with the Recorder of Deeds;
- (3) The final Truth in Lending Act disclosure; and
- (4) The note.

(b) In its transmittal of the loan package required by subsection (a) of this section, the

lender shall certify that each of the documents provided are true copies of the original documents.

(c) The loan package submitted pursuant to subsection (a) of this section shall remain confidential and exempt from disclosure under any law except to the borrower, a lender involved in the covered loan transaction, or current noteholder.

Sec. 222. Suspect settlement service providers.

The Mayor may create and maintain a public list of lenders and other settlement service providers, including real estate agents and appraisers, who have been found by a court to have engaged in a systematic pattern or practice of fraud or in operations in violation of the requirements of District law.

Sec. 223. Median family income.

The Mayor shall periodically publish or make available to lenders median family income for the Washington, D.C. that may be relied upon by lenders for purposes of this act.

TITLE III. VIOLATIONS AND REMEDIES; ENFORCEMENT AND CIVIL LIABILITY.

Sec. 301. Violations and remedies.

(a) The Mayor or any borrower under a covered loan may recover damages for a lender's violation of section 102 or Title II.

(b) Notwithstanding subsection (a) of this section, if the violation of section 102 or Title II was caused by the borrower, his or her employer, or a creditor providing materially incorrect information to the lender, which inaccuracy the lender did not discover prior to the covered loan funding, and if the lender reasonably attempted to verify the current and expected income and current debts of the borrowers in accordance with section 202(c), the lender shall not be liable.

(c) Damages or other relief awarded to the borrower under this section may include:

- (1) Reformation of the covered loan to correct or remove an unfair term or a term obtained in violation of section 102 or Title II, whichever is applicable as of the date of initial funding;
- (2) Actual damages;
- (3) Injunctive relief;
- (4) Reasonable attorneys' fees and costs; or
- (5) Statutory damages in an amount to be determined by the finder of fact if the finder of fact determines that the lender has engaged in a systematic pattern of practices and acted in violation of section 102 or Title II.

(d) An action for violation of section 102 or Title II shall be filed no later than 3 years after the violation has been discovered or should have been discovered.

New
§ 26-
1153.02

(e)(1) A lender making a covered loan who, when acting in good faith, fails to comply with section 102 or Title II, shall not be deemed to have violated section 102 or Title II if the lender establishes one of the following:

(A) Without regard to who discovered the error, within 120 days of the covered loan initial funding and prior to the institution of judicial process under this section, the borrower was notified of the violation, appropriate restitution was made, and whatever adjustments are necessary were made to the covered loan, at the choice of the lender, to:

New
§ 26-
1153.03

(i) Conform the covered loan to the requirements of section 102 or Title II;

(ii) Materially change the terms of the covered loan to benefit the borrower; or

(iii) Remove the features that caused the loan to be considered a covered loan.

(B) The violation resulted from a bona fide error notwithstanding the lender's maintenance of procedures reasonably designed to avoid the error and, within 60 days after the discovery of the compliance failure and prior to the filing of an action under this section, the borrower was notified of the compliance failure, appropriate restitution was made, and whatever adjustments are necessary were made to the covered loan, at the choice of the lender, to:

(i) Conform the covered loan to the requirements of section 102 or Title II;

(ii) Materially change the terms of the covered loan to benefit the borrower; or

(iii) Remove the features that caused the loan to be considered a covered loan.

New
§ 26-
1153.04

(2) If the lender fails to comply with section 211, or section 129(a) and (b) of the Truth in Lending Act in the case of a lender covered by section 102, the lender shall not be deemed to have violated section 102 or Title II, only if:

(A) The lender satisfies paragraph (1)(A)(i) or (B)(ii) of this subsection;

(B) The lender provided the borrower with a disclosure notice prior to the closing of the covered loan; and

New
§ 26-
1153.05

(C) The failure to comply with section 211, or section 129(a) or (b) of the Truth in Lending Act in the case of a lender covered by section 102, shall not have been shown to be part of a pattern or practice of such non-compliance.

(3) For the purposes of this subsection, a bona fide error shall include clerical error or, calculation, computer malfunction, and programming and printing errors. An error of legal judgment with respect to a lender's obligations under section 102 or Title II shall not constitute a bona fide error.

(f) No provision of this act shall be applied or interpreted to bar a borrower from bringing an action in an appropriate court of competent jurisdiction pursuant to any District or

federal law for damages, injunctive relief, or any other relief.

(g) The remedies provided in this act shall be the sole and exclusive remedies for the violation of any provision of this act.

Sec. 302. Enforcement.

The Mayor may conduct examinations and investigations, and issue orders to enforce the provisions of this act, with respect to lenders over which it otherwise has jurisdiction. The Mayor may examine any relevant instrument, document, account, book, record, or file of a lender over which the Mayor has jurisdiction. The Mayor may recover the reasonable cost of the examinations and investigations from the lender. A lender shall maintain records which allow the Mayor to determine compliance with this act and any regulations promulgated hereunder.

Sec. 303. Administrative penalties.

(a) If the Mayor determines that a person has violated this act, the Mayor may impose one or more of the following penalties:

New
§ 26-
1154.01

(1) A civil penalty imposed as follows:

(A) \$1,000 for the first violation;

(B) For the second and each subsequent violation occurring within a 24-month period of a prior violation, twice the immediately preceding civil penalty imposed (or which could have been imposed).

New
§ 26-
1155.01

(2) Order a person to cease and desist from engaging in any violation of this act and to make restitution for actual damages to the borrower.

(b) If the Mayor determines that any person has a systematic pattern of violations of this act, the Mayor may impose one or more of the following penalties in addition to the penalties set forth in subsection (a) of this section:

(1) Suspend, revoke, or refuse to renew any license issued by the Mayor;

(2) Prohibit or suspend an individual responsible for a violation of this act from working in his or her present capacity or in any other capacity related to the activities regulated by the Mayor; or

(3) Obtain an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this act.

Amend
§ 26-1102

Amend
§ 26-1110

Sec. 304. Final decision.

A decision of the Mayor under section 303 shall be a final order for the purposes of Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and shall be enforceable in a court of competent jurisdiction. The Mayor shall publish the final decisions, subject to redaction or modification to preserve confidentiality. Any person aggrieved by a final decision of the

Amend
§ 26-1114

Mayor pursuant to this title may appeal the decision to Superior Court of the District of Columbia.

Sec. 305. Assignee liability.

(a) Any person who purchases or is otherwise assigned a covered loan shall be subject to all claims and defenses with respect to the covered loan that the borrower could assert against the originator of the covered loan, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence could not determine that the loan was a covered loan for the purposes of this act, based on:

- (1) The documentation required by section 102 or Title II;
- (2) The itemization of the amount financed; and
- (3) Other disclosure of disbursements.

(b) Nothing in subsection (a) of this section shall affect the rights of a borrower under any other provision of this act.

Amend
§ 26-1118

(c) Notwithstanding any other provision of law, the relief provided under this section shall not exceed:

- (1) With respect to actions based upon a violation of this act, the amount of actual damages; and
- (2) With respect to all other causes of action, the sum of:
 - (i) The amount of all remaining indebtedness; and
 - (ii) The total amount paid by the consumer in connection with the transaction, reduced by the amount of any damages awarded under paragraph (1) of this subsection.

(d) Any person who sells or otherwise assigns a covered loan shall include a prominent notice, in the form as provided by the Mayor pursuant to rules of the potential liability under this section.

Amend
§ 26-1119

TITLE IV. RULEMAKING.

Sec. 401. Rulemaking authority.

The Mayor shall promulgate rules in accordance with the District of Columbia Administrative Procedure Act, approved October 12, 1968 (82 Stat. 1204; D.C. Official Code § 2-1501 *et seq.*), to carry out the purposes of this act. The rules shall be promulgated within 90 days of the effective date of this act.

TITLE V. APPLICABILITY.

Sec. 501. Applicability.

(a) Titles I through III shall apply 60 days after the effective date of the regulations promulgated by the Mayor pursuant to this act.

(b) The provisions of this act shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable federal laws and regulations. Nothing in this act is intended to preempt federal laws and regulations.

TITLE VI. MISCELLANEOUS PROVISIONS.

Sec. 601. Conforming amendments.

(a) The Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1101 *et seq.*), is amended as follows:

(1) Section 3 (D.C. Official Code § 26-1102) is amended by repealing paragraph (4).

(2) Section 11(b) (D.C. Official Code § 26-1110(b)) is amended as follows:

(i) Paragraph (1) is amended by striking the phrase “; and” and inserting a semi-colon in its place.

(ii) Paragraph (b)(2)(D) is amended by striking the period and inserting the phrase “; and” in its place.

(iii) A new paragraph (3) is added to read as follows:

“(3) The number of loans brokered, originated, made, and serviced under the Home Loan Protection Act of 2002.”.

(3) Section 15(a) (D.C. Official Code § 26-1114(a)) is amended as follows:

(A) The lead-in text is amended by striking the phrase "shall;" and inserting the phrase ", or person required to be licensed under this act, shall;" in its place;

(B) Paragraph (7) is amended by striking the phrase "; or" and inserting a semi-colon in its place.

(C) Paragraph (8) is amended by striking the period and inserting a semi-colon in its place.

(D) New paragraphs (9), (10), and (11) are added to read as follows:

“(9) Make predatory loans or engage in predatory lending activities in violation of the Home Loan Protection Act of 2002;

“(10) Purchase loans from an unlicensed mortgage broker or lender, unless the unlicensed mortgage broker or lender is exempt under section 3; or

“(11) Engage in the business as a mortgage lender, mortgage broker, or hold himself or herself out to the public to be a mortgage lender or mortgage broker, without a license under section 5 or an exemption under section 3.”.

(4) Section 19 (D.C. Official Code § 26-1118) is amended as follows:

(A) Subsection (a) is amended by adding a new paragraph (12A) to read as follows:

“(12A) Has been found in violation of the Home Loan Protection Act of 2002 or determined by the Commissioner to have made a loan in violation of the Home Loan Protection Act of 2002;”.

Repeal
§§ 42-
831.01 -
42-864.10

Revive &
Recodify
§§ 42-801
- 42-813,
42-831 -
42-837

(B) Subsection (b)(1) is amended by striking the phrase "The Superintendent may enforce the provisions of this section or any rules and regulations adopted by issuing an order: (A) To cease and desist from the violation and any further similar violations; and (B) Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation.", and inserting the phrase, "The Commissioner may enforce the provisions of this section, or any rules and regulations adopted hereunder, by issuing an order against any licensee or person required to be licensed."

(5) Section 20 (D.C. Official Code § 26-1119) is amended as follows:

(A) Subsection (a) is amended to read as follows:

"(a) Except as provided in subsection (d) of this section, the Commissioner shall give the licensee an opportunity for a hearing before the Commissioner takes any action under sections 18 or 19."

(B) A new subsection (d) is added to read as follows:

"(d) If the Commissioner determines that an emergency condition exists that may endanger the public health or safety of the District due to noncompliance with this act, the Commissioner may issue a temporary cease and desist order to require a licensee, or a person required to have a license, to cease operations immediately; provided, that the duration of a temporary cease and desist order issued under this subsection shall not exceed 30 days and the order includes notice of a hearing to be held within 30 days of the order to be held pursuant to subsection (b) and (c) of this section. Any person subject to a cease and desist order may appeal the order within 15 days, but shall be required to comply with the order pending appeal."

(b) Section 1804 of the Fiscal Year 1998 Revised Budget Support Act of 1998, effective March 20, 1998 (D.C. Law 12-60; D.C. Official Code § 26-603), is amended as follows:

(1) Paragraph (4) is amended by striking the word "and".

(2) A new paragraph (4A) is added to read as follows:

"(4A) Audit fees and other fees received under the Home Loan Protection Act of 2002; and".

Sec. 602. Repealer; revival.

(a) The Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, effective April 3, 2001 (D.C. Law 13-263; 48 DCR 991), is repealed as of November 6, 2001.

(b) Sections 95, 521, 522, 523, 534, 535, 536, 537, 538, 539, 539a, 544, and 545 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1271; D.C. Official Code §§ 42-801, 42-802, 42-803, 42-804, 42-811, 42-812, 42-813, 42-814, 42-815, 42-815.01, 42-816, 42-817, 42-818, and 42-819) and sections 1, 2, 3, 11, 13, 14, and 26 of the Compiled Statutes of the District of Columbia (D.C. Official Code §§ 42-805, 42-806, 42-807, 42-808, 42-809, 42-810, and 42-820), are revived as of November 6, 2001.

TITLE VII. FISCAL IMPACT STATEMENT.

Sec. 701. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

TITLE VIII. EFFECTIVE DATE.

Sec. 801. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia